

APPEAL NO. 032862
FILED DECEMBER 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 10, 2003. The hearing officer determined that on _____, the respondent (claimant) was not injured in the course and scope of his employment, but that because the appellant (carrier) has waived the right to contest compensability of the claimed injury by not paying or disputing the claim within seven days in accordance with Sections 409.021 and 409.022, the claimant did sustain a compensable injury on _____, and had disability from May 16, 2003, through the date of the hearing. The carrier appealed the waiver, compensable injury, and disability determinations. The claimant responded, urging affirmance.

DECISION

Affirmed.

On appeal, the carrier asserts that the hearing officer improperly shifted the burden of proof regarding the issue of waiver to the carrier, and that it did in fact initiate payment of benefits in accordance with the 1989 Act prior to filing its dispute of this claim.

The record reflects that the carrier received first written notice of the claimed _____, injury on February 26, 2003; that the Texas Workers' Compensation Commission (Commission) acknowledged receiving the carrier's "cert-21" on March 6, 2003, in which the carrier acknowledged receiving written notice of the claim on February 26, 2003, and agreed to pay benefits as they accrue; and that the carrier disputed the claim by filing a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Commission on April 8, 2003. The carrier presented evidence to show that it paid medical bills on this claim as early as April 4, 2003, and the record reflects that the claimant did not begin to miss time from work until May 16, 2003.

We initially note that we cannot agree with the carrier's assertion that the hearing officer improperly shifted the burden of proof regarding carrier waiver to the carrier in this case. The Appeals Panel has generally held that once a claimant has satisfied the burden of proving the date the carrier received written notice of the claimed injury (in this case the date found by the hearing officer is the date written on the carrier's "cert-21" and its amended TWCC-21) the carrier then has the burden of proving the date it accepted or disputed the compensability of the claimed injury. See Texas Workers' Compensation Commission Appeal No. 960974, decided July 8, 1996; Texas Workers' Compensation Commission Appeal No. 021972, decided September 23, 2002. As such, we find no error in placing the burden regarding waiver on the carrier in this case.

The resolution of the carrier waiver issue is determinative of the other issues presented here. On appeal, the carrier does not dispute that it received written notice of the claimant's _____, injury on February 26, 2003, filed its "cert-21" agreeing to pay benefits as they accrue with the Commission on March 6, 2003, and filed its TWCC-21 contesting compensability with the Commission on April 8, 2003. In challenging the hearing officer's determination that it waived the right to contest compensability in accordance with Sections 409.021 and 409.022, the carrier asserts that the claimant failed to prove that the carrier did not pay benefits as they accrued, and in accordance with the 1989 Act prior to filing its dispute. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, we addressed what action by a carrier is necessary to avoid waiver. In so doing, we focused on language in the Texas Supreme Court's decision in Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002), and determined that the carrier is required to take some action within seven days of receiving written notice of the injury in order to be entitled to the 60-day period to investigate a claim and deny compensability. It cannot simply sit back and rely on the fact that benefits did not accrue prior to the date it filed its dispute to argue that it did not waive its right to contest compensability. The evidence presented indicates that the first action taken by the carrier in this case was the filing of a "cert-21" on March 6, 2003, eight days after receiving written notice of the claimed injury. Thus, there is no evidence in the record that the carrier "took some action" within the seven-day period indicating that it had accepted the claim or intended to pay benefits and, as such, the hearing officer did not err in determining that the carrier waived its right to contest compensability of the claimed injury.

Due to our affirmance of the hearing officer's waiver determination, we likewise affirm his determination that the claimant sustained a compensable injury because the injury became compensable as a matter of law due to the carrier's waiver of its right to dispute compensability.

Finally, nothing in our review of the record indicates that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge